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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
	)	
Amendments of Parts 32, 36, 61,	)	
64 and 69 of the Commission's	)	RM-8221
Rules to Establish and Implement	)	
Regulatory Procedures for Video	)	
Dialtone Service	)	

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COMMENTS

U S WEST Communications, Inc. ("U S WEST"), through counsel and pursuant to the Federal Communications Commission's ("Commission") Public Notice,[1] hereby submits its comments on the Joint Petition for Rulemaking and Request for Establishment of a Joint Board ("Joint Petition") filed by the Consumer Federation of America ("CFA") and the National Cable Television Association ("NCTA") on April 8, 1993.[2]

I. INTRODUCTION AND SUMMARY

Petitioners express alarm that the Commission has allowed local exchange carriers ("LEC") to proceed with Video Dialtone

separations), Part 61 (tariffs), Part 64 (regulated/nonregulated cost allocation), and Part 69 (access charges) rules.[3] Petitioners ask the Commission to hold in abeyance all pending Section 214 Applications to provide VDT service and to refrain from accepting any new VDT applications.[4] Petitioners have one goal in filing their Joint Petition -- to delay the introduction of competitive VDT services.

U S WEST does not disagree with the view that significant revisions in Commission rules are necessary as telecommunications and video markets merge and competition becomes the norm in both markets. However, U S WEST opposes the Joint Petition for a number of reasons, including:

- Video Dialtone has yet to be defined, other than conceptually. At the present, it is impossible to identify either a service or network architecture that can be clearly classified as Video Dialtone -- because nothing yet exists.

- Adoption of VDT-specific rules at this stage of development would limit creativity and effectively dictate the outcome for better or for worse.

- With cable providers entering telecommunications markets and telephone companies entering video service markets, it is more and more difficult to rationalize totally different regulatory regimes for telephone companies and cable companies.

- U S WEST believes that, as much as possible, outcomes should be dictated by the marketplace, not by regulators. The Commission has already limited LEC participation in the video marketplace through the

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[3]Joint Petition at 2-4.

[4]Id. at 5.

adoption of its Video Dialtone Order.[5] Joint petitioners' assertion that the public interest will be served by suspending all LEC VDT efforts while the Commission's rules undergo a comprehensive rewrite to accommodate Video Dialtone strains credulity.[6]

- The Commission specifically indicated that it intends to use the Section 214 process to evaluate LEC Video Dialtone proposals,[7] and that it will reassess the adequacy of existing safeguards as LECs provide specific VDT proposals. As such, it would make no sense to refrain from accepting new Section 214 applications and to hold current applications in

necessary in approving LEC Section 214 Applications. It would be premature to institute an all-encompassing rulemaking to accommodate Video Dialtone -- when not a single customer has yet had an opportunity to purchase "this service" nor has any LEC had the opportunity to provision it. It is no understatement to say that Video Dialtone is in an experimental stage. It would be a waste of the Commission's limited resources to grant the Joint Petition and to institute the broad rulemakings at the present time. Given this position, U S WEST now makes more specific comments on the Joint Petition in the sections which follow.

II. PRICE REGULATION OF VIDEO DIALTONE SERVICE IS UNNECESSARY

In the multi-billion dollar market for delivering video entertainment services to the home, U S WEST has no market share within its telephone services area -- Zero. This is quite different from the situation in which U S WEST usually finds itself -- where competitors assert that U S WEST must be subjected to extensive regulatory rules and constraints because either it is the "dominant" provider or it has control over "bottleneck" facilities which its competitors must use. These same competitors assert that they should not be subject to any regulation because they lack market power (i.e., nondominant providers) and do not control "essential" facilities. In the case of Video Dialtone, U S WEST has no market power or even market presence in either the delivery or provision of video services to the home. If and when U S WEST begins providing VDT

service, it can only be classified as a "nondominant" provider. U S WEST finds it ironic that NCTA, the representative of entrenched[10] CATV interests, is a party to the aforementioned Joint Petition which calls for imposing additional constraints on U S WEST and other LECs which will delay, if not preclude, video services competition.

If the tables were turned and non-LEC entities were proposing to offer VDT service, U S WEST is confident that the Commission would not find price regulation to be in the public interest -- since the new entrants would have no market power and could not control price. This is exactly the situation in which U S WEST finds itself with respect to Video Dialtone. The price of VDT is effectively controlled by the price which the franchised cable operator charges for its service. As such, rather than devoting attention to the Joint Petition, the Commission should be addressing the issue of how it can ensure that LEC-provided VDT service will not be subject to traditional pricing and other regulatory constraints.

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[10]The fact that a carrier may be found to be a "dominant" provider of services in one market does not imply that it cannot be classified as a "nondominant" provider in another market. The Commission found AT&T to be a nondominant provider of non-IMTS (International Message Telephone Service) even though AT&T was found to be a dominant provider of IMTS. See International Competitive Carrier Policies, 102 F.C.C. 2d 812, 830-38 (1985); also see American Telephone & Telegraph (AT&T) Application under Section 214 of the Communications Act for authority to acquire certain lines of Western Union Corporation, Nos. W-P-C-6622 and I-T-C-90-163, Memorandum Opinion and Order, 6 FCC Rcd. 115 (1990).

To a large degree, the future of VDT service as a competitive alternative to existing cable service is in the hands of the Commission. Rather than imposing insurmountable regulatory barriers as Joint Petitioners propose, the Commission should recognize that VDT service is a competitive service and that LECs have no market power in the market for the delivery of video services to the home. Not only is price regulation of VDT service unnecessary, but the Commission should refrain from imposing anything more than the type of "streamlined" regulation which it applies to nondominant providers.

III. THE ONLY REGULATORY ISSUE OF SIGNIFICANCE FOR VIDEO DIALTONE SERVICE IS COST ALLOCATION

The cross-subsidization concerns expressed by Petitioners are nothing new -- they apply to a wide range of regulated services. Similar concerns are raised by LEC opponents on a regular basis in petitions to reject tariffs for competitive services. The inevitable allegation is that insufficient overheads and joint costs are being assigned to the products/

architecture,[11] where there are discrete facilities for VDT and telephony, the cost allocation issues become even less significant. The benefit of having a "parallel" VDT architecture

individual service costs will be determined largely by cost allocation methods. The Commission can halt LEC VDT efforts in their tracks by continuing to use procedures and methodologies that have evolved in a "narrowband" copper-based environment.

When the Commission determines that its cost allocation rules must be revised, it cannot look at cost allocation in isolation -- but must also look at the cost characteristics of the underlying network facilities. The cost characteristics of fiber and coaxial cable, which are the basic transport media for today's broadband networks, are quite different from copper cable. With copper, there is a direct relationship between cost and capacity (i.e., per-unit costs decline with increased capacity, but only so much). Capacity on any given copper facility is limited -- multiplexers and other electronics have expanded this capacity, but there is still a definable limit.

Optical fiber has quite different cost characteristics. Theoretically, capacity is limitless. Today a strand of fiber has a capacity of 2488.32 megabits (OC-48); with photonic improvements this capacity is expected to double in the near future. Clearly, the cost characteristics of broadband networks are quite different from traditional narrowband telephone networks. As such, it would be inappropriate to use traditional cost allocation methodologies to assign costs between integrated services on the basis of the amount of capacity used. Services such as video transport which use large amounts of capacity would be assigned virtually all the costs of a broadband network if

traditional cost allocation methodologies are employed. This makes no sense in a fiber environment where per-unit costs decline almost exponentially at higher levels of capacity (i.e., all the time using a single strand of fiber).

The surest way to stop development of integrated VDT/voice/data networks is to insist upon using traditional capacity-based cost allocation methodologies. These rules are based on assumptions about the underlying cost characteristics of the transport medium which are no longer valid in a broadband environment. If the public interest is to be served and the public is to benefit from broadband technology, regulation must "catch up" to technology. This means drastic changes in, if not

V. WITH PRICE CAP REGULATION, COST ALLOCATION BECOMES IRRELEVANT

Much of Joint Petitioners' argument is based on a rate of return regulatory model which no longer applies to price cap LECs in the interstate jurisdiction. With incentive-based price cap regulation, the issue of cost allocation comes into play in only two instances: 1) in determining whether the price of a "new" service is unreasonable in violation of Section 201(b);[12] and 2) in a Section 208[13] complaint where a party alleges that a service is priced unreasonably. Other than these two instances, cost allocation has no regulatory role in determining the price of a service under price cap regulation. The Commission's price cap formula in conjunction with price cap indices ("PCI") for individual basket and service band indices ("SBI") for individual service bands determine the limits of LEC pricing during any given tariff year. If the Commission treated VDT as a competitive service, free of any price regulation, as U S WEST suggests, VDT could not have any impact on the prices of any other U S WEST service subject to price cap regulation.

Petitioners' cost allocation argument is a "red herring" that is largely meaningless in a price cap regulatory regime. The public is already reaping the benefits of price cap regulation. The manner in which costs are allocated between VDT and other services within the interstate jurisdiction cannot

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[12] 47 U.S.C. § 201(b).

[13] 47 U.S.C. § 208.

possibly harm consumers of other services subject to price cap

on whether existing safeguards were sufficient to protect the public interest.[16] In addressing arguments similar to those raised by Petitioners,[17] the Commission concluded that:

> [E]xisting safeguards against discrimination and cross-subsidization in the provision of basic services by the local telephone companies, in conjunction with the additional protection of a first level nondiscriminatory video dialtone platform as required under the two-level regulatory framework, should effectively

pending.[21] As such, no purpose would be served by instituting a rulemaking to revise Part 64 for VDT purposes.

VII. VIDEO DIALTONE COSTS CAN BE EXPLICITLY IDENTIFIED UNDER CURRENT ACCOUNTING RULES

Current accounting rules and procedures in conjunction with

explicitly identify the costs associated with VDT service.[24] Petitioners' assertion that existing accounting rules provide "no method for separately determining the costs of video and telephone services" is unfounded.[25] Telephone ratepayers are adequately protected. No public interest objective would be served by halting the processing of LEC Section 214 Applications for VDT service as Joint Petitioners suggest. Delay would serve only the competitive interests of franchised cable operators, not the public interest.

VIII. CONCLUSION

As the foregoing demonstrates, Joint Petitioners have only one objective -- to delay the introduction of competitive VDT service. Joint Petitioners' Petition for Rulemaking is a smokescreen. Only the private interests of franchised cable

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[24]U S WEST has established procedures to track all investments and expenses associated with the construction of Video Dialtone facilities covered by its Request for Special

operators would be served, not the public interest. As such, the Commission should deny the Joint Petition.

Respectfully submitted,

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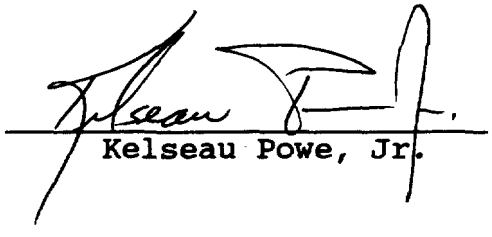
May 21, 1993

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify on this 21st day of May, 1993, that I have caused a copy of the foregoing **COMMENTS OF U S WEST COMMUNICATIONS, INC.** to be mailed via first class mail, postage prepaid, to the persons named on the attached service list.



Kelseau Powe, Jr.

*** via hand delivery**

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